

103 KAR 16:360. Deductibility of the New York Franchise Tax on Business Corporations, the Massachusetts Corporate Excise Tax, and West Virginia Business and Occupations Tax in Computing a Corporation's Net Income.

RELATES TO: KRS 141.010, 141.040

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations to administer and enforce Kentucky's tax laws. KRS 141.010(13)(a) prohibits a deduction from gross income for state taxes computed, in whole or in part, by reference to gross or net income. This administrative regulation establishes the requirements for the deductibility of the portion of the New York Franchise Tax on Business Corporations computed on the subsidiary capital base, the Massachusetts Corporation Excise Tax and West Virginia Business and Occupations Tax.

Section 1. The portion of the New York Franchise Tax on Business Corporations computed on the subsidiary capital base under New York Tax Law Section 210, Subdivision 1(e), shall be deductible in computing Kentucky net income.

Section 2. The Massachusetts Corporation Excise Tax imposed by Massachusetts General Law Chapter 63, Sections 32 and 39 shall be deductible as follows:

- (1) Any amount of the tax paid that is based on tangible property shall be deductible.
- (2) Any amount of the tax paid that is based on net worth shall be deductible.
- (3) Any amount of the tax paid that is based on net income shall not be deductible.

Section 3. The West Virginia Business and Occupation Tax imposed by West Virginia Code 11-13-2 on utilities shall be deductible as follows:

- (1) Any amount of tax paid by electric power producers based upon average taxable generating capacity shall be deductible.
- (2) Any amount of tax paid by electric power distributors based on kilowatt hour shall be deductible.
- (3) Any amount of tax paid by a natural gas storage business based on the amount of gas in the storage facility or the average monthly tax paid for a five-year period shall be deductible.
- (4) Any amount of tax paid by a manufacturer or producer of synthetic fuels that is based on the weight of the fuel manufactured or produced shall be deductible.
- (5) Any amount of tax paid by a public service company or utility business that is based on gross income shall not be deductible. (33 Ky.R. 1194; Am. 1518; eff. 1-5-2007.)